

Rousselin, Jorge

From: Kathie Tovo [REDACTED]
Sent: Wednesday, August 16, 2006 12:47 PM
To: Rousselin, Jorge
Subject: 208 Barton Springs C814-06-0106

Attachments: fairfielddevelopment.doc

RECEIVED

AUG 16 2006



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Neighborhood Planning & Zoning

Dear Jorge,

Attached please find a memo addressed to members of the Planning Commission and to you detailing the concerns and questions the Bouldin Creek Neighborhood Association has voiced to Fairfield Development about case C814-06-0106. I would very much appreciate this memorandum becoming part of the case file for 208 Barton Springs. And we thank you in advance for your consideration of the important issues we have raised.

We have provided a similar memo to Paul Johnston of Fairfield Development and to Fairfield's legal counsel, Michael Whellan.

I should add that I will not be able to send the memo to the members of the Planning Commission as my lunch break is running short, but I will do so this evening.

As you will see in the memo, we have asked the applicant to postpone this case until 9/26 to allow for further discussion. Paul Johnston and I are scheduled to discuss this matter this afternoon.

Many thanks for your assistance.

Best,
Kathie

Kathie Tovo
President, Bouldin Creek Neighborhood Association
512/565-5361

DATE: August 15, 2006

RECEIVED

TO: Jorge E. Rousselin, Neighborhood Planning & Zoning
Members of the Planning Commission

AUG 16 2006

FROM: Bouldin Creek Neighborhood Association (BCNA)

Neighborhood Planning & Zoning

RE: C814-06-0106 -- 208 Barton Springs

What follows is a summary of the Bouldin Creek Neighborhood Association's comments, which were provided verbally to Paul Johnston of Fairfield Development and Michael Whelan in meetings on 7/13/06 and 7/26/06. As noted during those meetings, these preliminary comments and opinions are subject to change as the BCNA receives additional feedback from residents and other neighborhood groups and further information from the developers and other relevant parties.

We have asked the applicant to request a postponement of this case until September 26, 2006. It was our understanding that the applicant had a willingness to continue further discussions with the neighborhood with the goal of coming to agreement on as many of the following issues as possible. The additional time would also allow the applicant to present the proposal to the general membership of the Bouldin Creek Neighborhood Association, which next meets on September 12, 2006.

In addition to the points articulated below, we expect to see Fairfield incorporate as many of the Town Lake Corridor study recommendations as feasible. Given the sensitive nature of this tract and the already-overbuilt Hyatt site, we also expect to see Fairfield incorporate significant green-building techniques and to identify specific, significant ways to meet the city's central goals for waterfront developments: improving pedestrian access to parkland; preserving views from residential area, and creating a pedestrian friendly environment.

Waterfront Overlay

The project's proposed encroachments on the waterfront overlay run counter to the goals of the Town Lake Corridor study, the Bouldin Creek Neighborhood Plan, and other community planning efforts.

The waterfront overlay district promotes the harmonious interaction and transition between urban development and Town Lake Park and the Colorado River. On behalf of the residents who live within the boundaries of Bouldin Creek as well as the many other citizens of Austin who enjoy the park, the BCNA will not support any reductions or variances from the waterfront overlay and its protections for these public amenities.

The applicant's proposed reduction in the secondary setback; subsequent encroachment in this same secondary setback; construction of retention structures; and introduction of normally prohibited construction and impervious cover within the primary and secondary setbacks would not benefit the general public or residents of the neighborhood or support the goals of the Town Lake Corridor Study. The Land Development Code sets the following standards for variances from the waterfront overlay: (1) the proposed project and variance are consistent with the goals and policies of the Town Lake Corridor Study, including environmental protection, aesthetic enhancement, and traffic; and (2) the variance is the minimum required by the peculiarities of the tract. Fairfield's proposed reductions in the waterfront overlay protections do not meet the above standards, and the BCNA does not support P.U.D. rezoning as an alternative to the normal compliance process.

Impervious Cover/Height

This project seeks significant increases in development rights inappropriate for waterfront development.

While the waterfront overlay imposes development restrictions, it also provides significant incentives—including increases in floor area over the base zoning in exchange for access easements and structured parking, and the ability to consider all residential spaces to be over and above the normally permitted floor area.

This parcel is primarily zoned Lake Commercial, with the exceptions of a CS parcel along Barton Springs Road and the CS parcel on which sits the existing Hyatt hotel. Lake zoning allows for 200 foot height, 50% building coverage, 50% impervious cover, and an 8:1 F.A.R. CS zoning allows for 60 foot height, 95% building coverage, 95% impervious cover, and 2:1 F.A.R.

The proposed PUD would combine the advantages of both zoning categories without limiting the project to the restrictions of either. Specifically, the project aims to construct buildings with the maximum heights and F.A.R. of Lake zoning, while adopting the more permissive building and impervious coverage of CS zoning.

The site should be required to comply with the 50% limitation on impervious cover allowed within Lake zoning. The site should also be required to comply with the City's commercial design and vertical mixed use site standards. (While the VMU ordinance will allow sites to keep existing impervious cover limits, this provision will only apply to buildings with heights 60' or under.) Lake zoning allows increased height as a balance against an increase in open space; allowing all buildings within this parcel to be as high as 200' without providing for at least 50% devoted to open space does not support the goals of the Town Lake Corridor study or the intentions of this zoning category.

Increased height on the CS1 parcel along Barton Springs Rd. from a maximum of 60' to the 200' allowed under Lake zoning represents a break with the tenets of the BCNA Neighborhood Plan as well as those of surrounding neighborhoods. We

We support the South Central Coalition of Neighborhoods' request for a comprehensive traffic study of Riverside and Barton Springs from I-35 to Mopac, and we would ask that any consideration of increased entitlements on this site be conditioned upon the results of that study.

Allowable Uses

This project seeks a significant expansion of allowable uses inappropriate for waterfront development

As the tract is in the waterfront overlay, only Lake—not CS1—uses should be allowed, with inappropriate conditional uses prohibited as indicated below. Likewise, the proposal should adhere to the code's definition of pedestrian-oriented uses and should not seek a reclassification of "private or public health club" and "residential sales and leasing office" as pedestrian-oriented uses without sufficient explanation of how such a reclassification serves a public benefit. In addition, such a reclassification should be accompanied by a restriction of square footage allotted to these uses.

Conditional uses should remain conditional, and many conditional uses, including the following, are inappropriate for this site, given its proximity to the waterfront:

group residential

automotive rentals

business or trade school
consumer repair services
outdoor entertainment
group home
telecommunication tower
local utility services
public primary and secondary educational facilities
safety services

communications services
medical offices
research services
transitional housing
hospital services
private primary and secondary ed. facilities
residential treatment

Increased Entitlements and Community Benefits

This project seeks significant increases in development rights without providing significant community benefits.

Although increases in entitlements associated with Vertical Mixed Use Buildings in the new Commercial Design standards will require developers to provide onsite affordable housing for a percentage of the residential and a fee to the city affordable housing fund for the nonresidential space above the first floor, Fairfield's project provides no such community benefits. The City of Austin has identified affordable housing as a priority, as has the BCNA and the Bouldin Creek Neighborhood Plan. The BCNA strongly believes that any increase in entitlements on this parcel should include support for affordability initiatives in this area.

Summary

PUD zoning, as defined by the Land Development Code, is intended "preserve the natural environment, encourage high quality development and innovative design and ensure adequate public facilities and services for development within a PUD." The resulting PUD development must be "superior to the development that would occur under conventional zoning." As drafted, Fairfield's proposed PUD does not meet the intent of PUD zoning, nor does it provide for a superior development when compared to the development that could occur under conventional zoning.

Comments on specific points contained within the ordinance draft dated April 20, 2006.

The BCNA strongly believes that the vague language throughout the ordinance should be made much more specific – terms defined, limits set, etc. to provide an appropriate level of protection for the surrounding communities as well as Austin parkgoers.

Open-ended construction phases and delays in providing protections required by code until construction is completed are inappropriate for such a sensitive and public tract. Examples follow.

Page 6:

- Phases like "to meet market demand," "currently contemplated," etc. create an undesirable and inappropriate level of uncertainty.
- 3: The provision of 250 spaces at any one time, especially including the vagueness of the phasing, could be inadequate. Given the general vagueness of the proposal, there is no way to predict requirements at any one time or the adequacy of the specified number.

Page 7:

•4, 5, 6: Locating temporary construction office, etc. in waterfront overlay for indeterminate period of time does not support goals of the Town Lake Corridor study, the Bouldin Creek Neighborhood Plan, and other community planning efforts.

•7: We have concerns about allowance of up to 5 years to install permanent landscaping and pedestrian-oriented uses and the same timeframe for parking garage to be without screening; we request an explanation of the rationale.

Page 8:

•1A: Only L uses should be allowed, with inappropriate conditional uses prohibited (see below).

•1C.: makes "private or public health club" and a "residential sales and leasing office" pedestrian-oriented use. As these are not pedestrian-oriented uses appropriate for lakefront developments, we would like to hear a clear rationale for this reclassification and information about the approximate square footage allocated to these two uses.

•2B.: Conditional uses should remain conditional, and many conditional uses, including those listed above, are inappropriate for this site, given its proximity to the waterfront.

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3.B. same as 2B.

We haven't enumerated the above information parcel by parcel, but the comments above should be applicable in spirit to the parcel in general.

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1A.(1) would allow for the addition of a 25' larger footprint, resulting in as much as an additional 103,500 sq. ft. [25' x 230' (largest dimension on west) x 18' (stories)]. This point would also allow additional height up to at least 30' on the existing hotel building or 60'. The phrase "greater of 30' or 60'" is unclear. Without clear measurements on the building, it's unclear how much additional square footage that would produce, but the BCNA strongly feels that as the Hyatt violates many of the guidelines for waterfront development, no additional expansion of this building should be allowed to occur.

1A(2) would allow for additions, etc. to "any accessory building" [emphasis ours]. This point would seem to allow construction of additional accessory buildings as it does not specify *existing* buildings. This language would seem to allow new structures to encroach on the waterfront overlay as long as they don't get closer to the lake than do the existing structures. In addition, this provision does not define or otherwise limit sufficiently alterations, modifications, etc. The BCNA cannot support such a provision.

1B. The vagueness of this section would seem to all kinds of structures, including detention ponds and other very undesirable construction. "Improvements, repairs, additions, and replacements" needs very specific definitions.

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2A. Exactly which of the site development regulations does this project request exemption from, and why?

2B. and 2 C All language —"water features," etc. —is overly vague, and all involve encroachments on the waterfront overlay that would go against the goals of the Town Lake Corridor study, the Bouldin Creek Neighborhood Plan, and other community planning efforts.

Page 12

3. Exactly which of the site development regulations are you requesting exemption from, and why?

B. Why are you requesting exemption from providing adequate structural controls?

Page 13

•4E: Exactly what is required on this site in terms of trail improvements?

Page 14

•H: This ordinance would exclude the site from many requirements (setbacks from critical water features, wetland protection, etc) and analysis (environmental assessments, drainage studies, tree survey, etc).

Q: Why are you requesting exemption from these requirements? How will Fairfield ensure that the development proceeds in an environmentally appropriate manner?

•Changing the setback from the lake from 150 to 50 feet does not support the goals of the Town Lake Corridor study, the Bouldin Creek Neighborhood Plan, and other community planning efforts.

L(1) allows unspecified amount of fill dirt to raise the "area" —which is not defined and thus seems to apply to the entire site—"above the 100 year flood elevation." Lack of definition for the term "above" could result in even more height of an unrestricted amount.



MEMORANDUM

TO: Mayor Will Wynn and City Council Members


FROM: Jeb Boyt, Chair
Downtown Commission

DATE: September 22, 2006

RE: Hyatt Redevelopment
208 Barton Springs Road
Proposed Rezoning to PUD
Case No. C814-06-0106

At their Wednesday, August 16, 2006 meeting, the Downtown Commission received a presentation on the proposed mixed-use Hyatt Redevelopment project at 208 Barton Springs Road. After discussion, the Commission unanimously approved the following resolution:

"The Downtown Commission supports the zoning change to PUD as requested by the applicant"



Jeb Boyt, Chair
Downtown Commission

cc: Toby Hammett Futrell, City Manager
Greg Guernsey, Director, Neighborhood Planning and Zoning Department
Jorge Rousselin, Neighborhood Planning and Zoning Department

AGREEMENT BETWEEN FAIRFIELD TOWN LAKE/ZILKER LP
and BOULDIN CREEK NEIGHBORHOOD ASSOCIATION

Whereas parties have reached agreement concerning the redevelopment of 208 Barton Springs Road, and wish to express that agreement in the form of a PUD Zoning Ordinance and restrictive covenants. Therefore,

Bouldin Creek Neighborhood Association ("BCNA") and Fairfield Town Lake/Zilker LP ("Fairfield") agree as follows:

1. BCNA will not oppose the passage by Planning Commission and City Council of the attached PUD Ordinance (the "Ordinance") to rezone 208 Barton Springs. (Ex 1) BCNA and Fairfield hereby fully acknowledge and agree that BCNA is an unincorporated neighborhood association and does not and will not control the actions of individual persons within the Bouldin Creek neighborhood or members of the BCNA. Accordingly, both BCNA and Fairfield acknowledge and agree that BCNA shall have no liability and shall not be in default under this Agreement in the event a member of BCNA or a resident of the Bouldin Creek neighborhood opposes the passage by the Planning Commission or the City Council of the Ordinance. BCNA will designate an officer or committee member to state to the Planning Commission and City Council that BCNA does not oppose the Ordinance.

2. Prior to consideration by the ~~Planning Commission~~ ^{City Council} of the Ordinance, Fairfield will sign and place into escrow with Brown McCarroll, L.L.P., (Attn. Nikelle Meade) the Restrictive Covenant (the "Covenant") attached hereto as Ex 2. Upon the effective date of the PUD Ordinance rezoning 208 Barton Springs, BCNA and Brown McCarroll, L.L.P., shall be automatically authorized to file the Covenant in the Official Public Records of Travis County, Texas, without the need for further action or authorization from Fairfield.

3. Fairfield will sign the Restrictive Covenant between Fairfield and the City of Austin attached hereto as Ex 3 and will provide the executed Restrictive Covenant to the City prior to consideration by the City Council of the Ordinance.

4. Fairfield may rescind this agreement if there are substantial modifications to the PUD Ordinance or substantially different requirements imposed on the Property or Fairfield prior to the Austin City Council's approval of the Ordinance that are substantially more restrictive than those set forth in the PUD as of the Effective Date of this Agreement. BCNA may rescind this Agreement if there are substantial modifications to the PUD Ordinance or substantially different requirements imposed on the Property or Fairfield that are substantially less restrictive than those set forth in the PUD as of the Effective Date of this Agreement. Any party rescinding the Agreement must provide written notice thereof to the other party.

5. All notices required pursuant to this Agreement shall be in writing addressed to the respective parties as set forth below, unless another address shall have been designated, and shall be delivered by personal delivery, or by registered or certified mail, to the parties as follows:

If to BCNA, to:

Bouldin Creek Neighborhood Association
Attn: Association President
P.O. Box 3683
Austin, Texas 78764

with a copy to:

Brown McCarroll, L.L.P.
Attn: Nikelle S. Meade
111 Congress Avenue, Suite 1400
Austin, Texas 78701-4043
(512) 479-1147

If to Owner, to:

Glenn Jones / Sandra Hill
Fairfield Town Lake / Zilker LP
2045 N. Hwy 360, Ste 250
Grand Prairie, TX 75056
817-816-9400

6. The effective date of this Agreement (the "Effective Date") is _____, 2006.

Agreed:

Fairfield Town Lake/Zilker LP

By: FF Town Lake/Zilker LLC, a Delaware
limited liability company, General Partner

By: FF Properties, Inc., a Delaware corporation, Manager

By: _____
Name: _____
Title: _____

Bouldin Creek Neighborhood Association

By: _____
Kathryne B. Tovo, President

Bouldin Creek Neighborhood Association

By: _____
Charles Coryell Walton, Vice President

~~ORDINANCE~~ *Not prepared by COA.*

AN ORDINANCE REZONING AND CHANGING THE ZONING MAP ACCOMPANYING CHAPTER 25-2 OF THE CITY CODE TO ESTABLISH A PLANNED UNIT DEVELOPMENT (PUD) DISTRICT ON APPROXIMATELY 9.567 ACRES OF LAND, GENERALLY KNOWN AS THE FAIRFIELD/HYATT PLANNED UNIT DEVELOPMENT PROJECT, AND LOCATED AT 208 BARTON SPRINGS ROAD, IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN

PART 1. The zoning map established by Section 25-2-191 of the City Code is amended to change the base zoning district from "L-NP" Lake-Neighborhood Plan district and "CS-1-NP" Commercial - Liquor Sales - Neighborhood Plan district to "PUD-NP" Planned Unit Development - Neighborhood Plan district on the property (the "Property") described in File C814-06-0106 and consisting of approximately 9.567 acres of land being more particularly described by metes and bounds in Exhibit A incorporated into this ordinance, generally known as the Fairfield/Hyatt project, locally known, as the land located at 208 Barton Springs Road in the City of Austin, Travis County, Texas, and identified on map attached as part of Exhibit A.

PART 2. This ordinance, together with the attached Exhibits A through H, shall constitute the land use plan for the planned unit development district (the "PUD") created by this ordinance. The PUD shall conform to the limitations and conditions set forth in the ordinance and the land use plan (the "PUD Land Use Plan") on record at the Neighborhood Planning and Zoning Department in File No. C814-06-0106 and attached as Exhibit C. If this ordinance and the attached exhibits conflict, the ordinance applies. Except as otherwise specifically provided by this ordinance, all other rules, regulations and ordinances of the City in effect on the effective date of this ordinance shall apply to the PUD.

PART 3. The attached exhibits or copies of originals on file with the City of Austin Neighborhood Planning and Zoning Department in File No. C814-06-0106 are incorporated into this ordinance in their entirety as though set forth fully in the text of this ordinance. The attached exhibits are as follows:

- Exhibit A: Metes and Bounds, and Existing Conditions Plan
- Exhibit B: Existing Zoning Map
- Exhibit C: Detailed PUD Land Use Plan
- Exhibit D: Detailed PUD Land Use Plan with Maximum Shoreline Reclamation
- Exhibit E: Phasing Plan
- Exhibit F: Permitted Uses Table
- Exhibit G: Site Development Regulations Table
- Exhibit H: Metes and Bounds for the former CS-1-NP portion of the South Parcel

PART 4. The PUD is divided into three (3) separate Parcels, which are depicted as the "Hotel Parcel," the "West Parcel," and the "South Parcel" in the PUD Land Use Plan and in City of Austin File C814-06-0106. The PUD shall be developed in phases. Any portion of any Parcel may be developed as a phase and any phase may be implemented at any time.

PART 5. The following regulations apply to the PUD:

- A. The uses set forth in the Permitted Uses Table (Exhibit F) are permitted uses in the PUD.
- B. The conditional uses specified as such in the Permitted Uses Table (Exhibit F) may be authorized as conditional uses in the PUD.
- C. The PUD shall be developed according to the development regulations set forth in the Development Regulations Table (Exhibit G).

PART 6. In accordance with Section 25-2-411(A) of the City Code, the provisions of this ordinance and the attached exhibits apply to the PUD instead of the otherwise applicable provisions of the City Code.

PART 7. This ordinance takes effect on _____, 2006.

PASSED AND APPROVED

Date: _____

§
§
§

Will Wynn
Mayor

APPROVED: _____

David Allan Smith
City Attorney

ATTEST: _____

Shirley A. Brown
City Clerk

Exhibit A

Metes and Bounds, and Existing Conditions Map

[to be attached]

Exhibit B

Existing Zoning Map

[to be attached]

Exhibit C

Detailed PUD Land Use Plan

[to be attached]

Exhibit D

Detailed PUD Land Use Plan with Maximum Shoreline Reclamation

[to be attached]

Exhibit E

Phasing Plan

1. The PUD is divided into three (3) separate parcels identified on the PUD Land Use Plan as the "Hotel Parcel," the "West Parcel" and the "South Parcel." The PUD shall be developed in phases to accommodate the redevelopment of the existing parking improvements and to meet market demand. The existing hotel on the Hotel Parcel shall be entitled to continue to be used and operated during the construction of any and all of the phases of the redevelopment of the PUD. Any portion of any Parcel may be included in a phase, and more than one Parcel may be involved in a phase.
2. Impervious cover, building coverage, floor to area ratio, parking, landscaping and required open space are as reflected on the PUD Land Use Plan and are calculated on the cumulative gross site area of the PUD property, and the portions of the property included in any phase, and the site plan for each phase, shall not be required to satisfy those requirements on a "stand alone" basis, but shall be approved if consistent with the PUD Land Use Plan for such phase.
3. At all times during construction of any phase, no less than 250 parking spaces, onsite or offsite, will be provided for use of the Hotel Parcel. It is currently contemplated that the West Parcel shall be developed in at least two phases. The first phase would be the construction of the lower portion of a building, primarily containing enclosed parking and pedestrian-oriented uses, and the second phase of which would be the completion of the remainder of the building, primarily containing residential multi-family or condominium units. After completion of the first phase of the West Parcel, it is currently contemplated that the South Parcel would be developed to provide, among other things, permanent enclosed parking for the Hotel Parcel. The foregoing sequence is what is currently contemplated, however, the number and location of the phases and the sequence of the development shall be as the Owner shall determine. As a result of the loss of the existing surface parking satisfying the required parking for the use of the Hotel Parcel during the construction of the improvements on the West Parcel and the South Parcel, it is intended that the continued use of the Hotel Parcel shall be permitted during the construction of a phase on the West Parcel or the South Parcel, so long that upon completion of such phase the required parking for the use of the hotel is provided on a cumulative basis on all of the PUD property.

4. During construction of any phase of the PUD, construction staging areas, include laydown area for building materials, temporary construction office, storage of building construction equipment and vehicles, and daytime parking of personal vehicles, shall be permitted upon existing paved surfaces shown as paved surfaces on the attached Existing Conditions Plan (Exhibit A) within the Waterfront Overlay District primary and secondary setback areas within the West Parcel; provided, landscaping shall be installed on the Town Lake side of the construction staging areas to screen the construction staging areas from Town Lake.
5. During the construction of any phase of the PUD, construction and temporary security fencing around the limits of construction and the construction staging areas shall be permitted upon existing paved surfaces shown as paved surfaces on the attached Existing Conditions Plan (Exhibit A) in the Waterfront Overlay District primary and secondary setback areas within the West Parcel.
6. A temporary access road, including a temporary curb cut, to South First Street as reflected on the PUD Land Use Plan shall be permitted in the Waterfront Overlay District primary and secondary setback areas within the West Parcel until the permanent internal circulation drive is installed in the West Parcel upon completion of the final phase of the building and related improvements on the West Parcel.
7. To accommodate the construction of subsequent phases of the buildings to be constructed on the West Parcel and the South Parcel, until the earlier of (a) the completion of the final phase of such building, or (b) the number of years after the issuance of a Certificate of Occupancy for the first phase of such building as indicated below:
 - (i) Required permanent landscaping and related improvements shall not be required to be installed, until two (2) years after the issuance of a Certificate of Occupancy for the first phase of such building.
 - (ii) Occupancy and use of the first floor of the first phase of a building for pedestrian oriented uses shall not be required, until three (3) years and six (6) months after the issuance of a Certificate of Occupancy for the first phase of such building.
 - (iii) The façade of the lower floors of the first phase of a building including enclosed parking shall be permitted to remain with concrete finish, until three (3) years and six (6) months after the issuance of a Certificate of Occupancy for the first phase of such building.
8. During construction of a subsequent phase of a building, a construction office and a sales and leasing office may be located in the retail or garage portions of the first phase of such building.

Exhibit F

Permitted Uses Table

1. Hotel Parcel

A. All uses specified as permitted uses, conditional uses, or pedestrian-oriented uses in the Lake Commercial (L) district, the Waterfront Overlay (WO) district, and South Shore Central Waterfront Overlay (WO) subdistrict as provided in Section 25-2-491, Section 25-2-691 and Section 25-2-692(F) of the Austin City Code in effect on the date of this ordinance (the "City Code").

In addition, the following uses are permitted uses:

Hotel; and

Hotel accessory uses (meeting room rental, food sales, sit down bar no larger than 20,000 square feet, fitness center, business center, bike rentals, guest laundry, concierge services, secretarial services, pool).

Except that the following uses (as such uses are defined in the City Code) are prohibited:

- (i) automotive rental (not including taxicab parking and dispatching)
- (ii) automotive repair services
- (iii) automotive sales
- (iv) automotive washing (of any type)
- (v) outdoor entertainment
- (vi) service station
- (vii) communication service facilities
- (viii) local utility services
- (ix) telecommunication tower
- (x) group residential; and
- (xi) sexually-oriented business.

B. All uses specified as conditional uses in the Commercial – Liquor Sales (CS-1) district, which are not specified as permitted uses in A above, are conditional uses on the Hotel Parcel, except that the following uses (as such uses are defined in the City Code) are prohibited:

- (i) automotive rental (not including taxicab parking and dispatching)
- (ii) automotive repair services
- (iii) automotive sales
- (iv) automotive washing (of any type)
- (v) outdoor entertainment
- (vi) service station
- (vii) communication service facilities

- (viii) local utility services
- (ix) telecommunication tower
- (x) group residential; and
- (xi) sexually-oriented business.

C. A privately owned health club, gymnasium, spa, health or physical fitness studio or similar personal improvement service that has memberships available to the guests of the hotel and to the general public (not to exceed 12,000 square feet) and a residential sales and leasing office (not to exceed 2,000 square feet) shall be deemed a pedestrian-oriented use for purposes of Section 25-2-691(C) and Section 25-2-692(F) of the City Code.

2. West Parcel

A. All uses specified as permitted uses or as pedestrian-oriented uses in the Lake Commercial (L) district, the Waterfront Overlay (WO) district, and South Shore Central Waterfront Overlay (WO) subdistrict, as provided in Section 25-2-491, Section 25-2-691 and Section 25-2-692(F) of the City Code, and any other uses that are permitted in said districts or subdistrict by subsequent amendments applicable to said districts or subdistrict are permitted uses in the West Parcel. A residential use that is permitted in any multifamily base district is also a permitted use, except that the following uses (as such uses are defined in the City Code) are prohibited:

- (i) automotive rental (not including taxicab parking and dispatching)
- (ii) automotive repair services
- (iii) automotive sales
- (iv) automotive washing (of any type)
- (v) outdoor entertainment
- (vi) service station
- (vii) communication service facilities
- (viii) local utility services
- (ix) telecommunication tower
- (x) group residential; and
- (xi) sexually-oriented business.

B. All uses specified as conditional uses in the Lake Commercial (L) district are conditional uses in the West Parcel, except that the following uses (as such uses are defined in the City Code) are prohibited:

- (i) automotive rental (not including taxicab parking and dispatching)
- (ii) automotive repair services
- (iii) automotive sales
- (iv) automotive washing (of any type)
- (v) outdoor entertainment

- (vi) service station
- (vii) communication service facilities
- (viii) local utility services
- (ix) telecommunication tower
- (x) group residential; and
- (xi) sexually-oriented business.

C. A privately owned health club, gymnasium, spa, health or physical fitness studio or similar personal improvement service that has memberships available to the residents, occupants, or guests of the improvements constructed within the West Parcel and to the general public (not to exceed 12,000 square feet) and a residential sales and leasing office (not to exceed 2,000 square feet) shall be deemed pedestrian-oriented uses for purposes of Section 25-2-691(C) and Section 25-2-692(F) of the City Code.

3. South Parcel

A. All uses specified as permitted uses or as pedestrian-oriented uses in the Lake Commercial (L) district, the Waterfront Overlay (WO) district, and South Shore Central Waterfront Overlay (WO) subdistrict, as provided in Section 25-2-491, Section 25-2-691 and Section 25-2-692(F) of the City Code, and any other uses that are permitted in said districts or subdistrict by subsequent amendments applicable to said districts or subdistrict are permitted uses in the South Parcel, except that a residential use that is permitted in any multifamily base district is also a permitted use, and except that the following uses (as such uses are defined in the City Code) are prohibited:

- (i) automotive rental (not including taxicab parking and dispatching)
- (ii) automotive repair services
- (iii) automotive sales
- (iv) automotive washing (of any type)
- (v) outdoor entertainment
- (vi) service station
- (vii) communication service facilities
- (viii) local utility services
- (ix) telecommunication tower
- (x) group residential; and
- (xi) sexually-oriented business.

B. All uses specified as conditional uses in the Lake Commercial (L) district are conditional uses in the South Parcel, except that the following uses (as such uses are defined in the City Code) are prohibited :

- (i) automotive rental (not including taxicab parking and dispatching)

- (ii) automotive repair services
- (iii) automotive sales
- (iv) automotive washing (of any type)
- (v) outdoor entertainment
- (vi) service station
- (vii) communication service facilities
- (viii) local utility services
- (ix) telecommunication tower
- (x) group residential; and
- (xi) sexually-oriented business.

C. A privately owned health club, gymnasium, spa, health or physical fitness studio or similar personal improvement service that has memberships available to the residents, occupants, or guests of the improvements constructed within the South Parcel and to the general public (not to exceed 12,000 square feet) and a residential sales and leasing office (not to exceed 2,000 square feet) shall be deemed a pedestrian-oriented use for purposes of Section 25-2-691(C) and Section 25-2-692(F) of the City Code.

Exhibit G

Site Development Regulations Table

1. Hotel Parcel

A. Except as provided in this PUD, no buildings, structures, or improvements on portion of the Property shown as the "Hyatt Parcel" in Exhibit A Existing Conditions Plan, attached hereto and made a part hereof for all purposes, may be increased, enlarged, remodeled, expanded, relocated, reconstructed, changed, or improved beyond what is legal and permitted according to the rules, regulations, codes and ordinances of the City of Austin applicable to the Hyatt Parcel and in effect as of November 14, 2006, regardless of any and all changes, amendments, adjustments, made after November 14, 2006, concerning said City of Austin rules, regulations, codes, and ordinances.

B. The existing building² structures, parking, loading areas and other improvements located in the Hotel Parcel may be maintained, repaired, restored, modified, altered, renovated, improved, replaced and upgraded so long as:

- (1) with respect to those portions of the existing primary building that are less than sixty (60) feet in height, all alterations, modifications, replacements, additions and other improvements are within a building envelope that (a) does not enlarge the existing footprint of the existing hotel building by more than twenty-five (25) linear feet; (b) does not exceed up to thirty (30) feet in height where there is currently no structure or up to sixty (60) feet in height where there is an alteration, modification, replacement, addition, or other improvement to a structure existing as of the effective date of this Ordinance; and (c) and is not within the primary or secondary setbacks of the South Shore Central Waterfront Overlay subdistrict.
- (2) all alterations, modifications, replacements, additions and other improvements with respect to any accessory building, pool, deck, patio, parking, loading and other improvements do not (a) increase the existing amount of impervious cover in the Hotel Parcel; (b) do not exceed their respective heights existing as of the effective date of this Ordinance; and (c) do not extend closer to Town Lake than the existing deck, patio and other improvements.

C. Improvements, repairs, additions and replacements along and adjacent to the Hike & Bike & Drainage Easement along Town Lake, including existing landscaping and associated irrigation systems, existing slope stabilization structures, existing retaining walls and similar improvements, and existing screening of the existing parking and loading area shown on the Existing Conditions Exhibit attached hereto as Exhibit A, shall be permitted notwithstanding the

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provisions of Section 25-2-492, Section 25-2-721, Section 25-2-742, and Section 25-8-261 of the City Code.

D. Parallel parking and sidewalks along any portion of the internal circulation drive located in the Hotel Parcel are permitted.

E. Prior to obtaining a final Certificate of Occupancy for a building on the South Parcel or the West Parcel, a vegetative screen shall be planted along the portion of the northernmost property line of the Hotel Parcel adjacent to the surface parking lot on the east side of the Hotel Parcel.

F. Height of all new structures and expansions and renovations constructed after November 14, 2006, on the Hotel Parcel shall be measured as the vertical distance from the average of the highest natural grade and lowest natural grade adjacent to the building to:

- (a) for a flat roof, the highest point of the coping,
- (b) for a mansard roof, the deck line;
- (c) for a pitched or hip roof, the mid-point of the highest gable;
- (d) for other roof styles, the highest point of the roof.

Natural grade shall mean the grade of a parcel as the parcel existed on November 14, 2006 as shown in the Existing Conditions Exhibit attached hereto as Exhibit A, before it is modified by moving earth, adding or removing fill, or installing a berm, retaining wall, or architectural landscape feature.

G. All new residential development on the Hotel Parcel shall comply with Austin Energy Green Building Program in effect August 9, 2006, for a minimum two-star rating.

West Parcel

A. The site development regulations for the Lake Commercial (L) district specified in Section 25-2-492 of the City Code shall apply to the West Parcel, except as depicted in the PUD Land Use Plan.

B. The provisions of Section 25-2-721 and Section 25-2-742 of the City Code are applicable in the West Parcel; provided the following shall also apply:

- (1) In the primary setback area:
 - (a) The existing improvements and impervious cover, including specifically, but without limitation, the existing boat docks and facilities, as depicted in the PUD Land Use Plan are permitted, and may be upgraded, improved and, if and only if the shoreline is reconstructed in accordance with Section 4.A. of Exhibit G of this

Ordinance, relocated within the boundaries of the West Parcel, so long as they do not encroach further into any setback.

- (b) The internal circulation drive and impervious cover as depicted in the PUD Land Use Plan are permitted, and may be upgraded, improved and relocated within the boundaries of the West Parcel.
- (c) Sidewalks along the internal circulation drive as depicted in the PUD Land Use Plan are permitted.
- (d) No structures, pavement, or buildings not existing as of the effective date of this Ordinance are permitted, except as shown on the PUD Land Use Plan.
- (e) Temporary construction areas and construction offices are permitted on existing pavement shown on the Existing Conditions Plan (Exhibit A).

(2) In the secondary setback area:

- (a) The internal circulation drive and impervious cover as depicted in the PUD Land Use Plan are permitted, and may be upgraded, improved and relocated within the boundaries of the West Parcel.
- (b) Sidewalks along the internal circulation drive as depicted in the PUD Land Use Plan are permitted.
- (c) Plaza and patio seating areas are permitted.
- (d) No structures, pavement, or buildings not existing as of the effective date of this Ordinance are permitted, except as shown on the PUD Land Use Plan.
- (e) Temporary construction areas and construction offices are permitted on existing pavement shown on the Existing Conditions Plan (Exhibit A).

(3) Parallel parking along the internal circulation drive is permitted.

(4) Entries to parking garages as depicted in the PUD Land Use Plan are permitted.

C. The provisions of Section 25-8-261 of the City Code are applicable in the West Parcel, except as follows:

- (1) Improvements, repairs, additions and replacements consisting only of landscaping and associated irrigation systems, slope stabilization, and retaining walls, and screening of the existing parking and loading area, are permitted along and adjacent to the Hike & Bike & Drainage Easement along Town Lake.
- (2) Boat docks and facilities depicted in the PUD Land Use Plan are permitted

D. All residential development on the West Parcel shall comply with Austin Energy Green Building Program in effect August 9, 2006, for a minimum two-star rating.

E. Prior to obtaining a final Certificate of Occupancy for any pedestrian-oriented uses or residential dwelling unit in improvements constructed on the West Parcel, an access easement will be provided to the City that allows (i) public access to the internal drive as depicted in the PUD Land Use Plan; (ii) public access from the internal drive to the Town Lake hike and bike trail as depicted in the PUD Land Use Plan; and a dedicated bike lane no less than five (5) feet in width for each of two directions of travel either on the internal drive depicted on the PUD Land Use Plan or elsewhere on the Property following the alignment of the internal drive shown on the PUD Land Use Plan.

F. Prior to obtaining a final Certificate of Occupancy for any pedestrian-oriented uses or residential dwelling unit within improvements constructed on the West Parcel, at least ten (10) bicycle parking mechanisms shall be provided within the portion of the public access easement area from the internal drive to the Town Lake hike and bike trail as depicted in the PUD Land Use Plan at such location(s) as may be determined by the then owner of the West Parcel. The bicycle parking shall be City of Austin, Class III Style Bicycle Parking, pursuant to Standard No. 710S-1, adopted on February 17, 2000.

G. Prior to obtaining a final Certificate of Occupancy for any pedestrian-oriented uses or residential dwelling unit within improvements constructed on the West Parcel, a dedicated bike lane differentiated by a different surface color from that of the internal circulation drive and sidewalk depicted on the PUD Land Use Plan shall be constructed. The bike lane shall be no less than five (5) feet in width for each of two directions of travel either on the internal drive or elsewhere on the Property following the alignment of the internal drive shown on the PUD Land Use Plan. The bike lane improvements shall not be included in any impervious coverage calculations and shall be permitted uses within the primary and secondary setbacks. Any bike lane improvements within the primary and secondary setbacks shall be constructed of pervious material such as crushed granite.

H. Height of all structures on the West Parcel shall be measured as the vertical distance from the average of the highest finished grade and lowest finished grade adjacent to the building to:

- (a) for a flat roof, the highest point of the coping;
- (b) for a mansard roof, the deck line;
- (c) for a pitched or hip roof, the mid-point of the highest gable;
- (d) for other roof styles, the highest point of the roof.

Finished grade for purposes of measuring height on all portions of the West Parcel within the one hundred-year floodplain shall be no higher than either (i) three (3) feet above the one hundred-year flood elevation or (ii) the minimum number of feet above the one hundred-year flood elevation required for compliance by applicable law, whichever is lower.

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Finished grade for purposes of measuring height on all portions of the West Parcel outside the one hundred-year floodplain shall be no higher than two (2) feet above natural grade.

Natural grade shall mean the grade of a parcel as the parcel existed on November 14, 2006, as shown on Exhibit A, before it is modified by moving earth, adding or removing fill, or installing a berm, retaining wall, or architectural landscape feature.

3. South Parcel

A. The site development regulations for the Lake Commercial (L) district specified in Section 25-2-492 of the City Code are applicable in the South Parcel, except as depicted in the PUD Land Use Plan.

B. The South Parcel is not within any primary or secondary setback of the South Central Subdistrict of the Waterfront Overlay District.

C. All residential development on the South Parcel shall comply with Austin Energy Green Building Program in effect August 9, 2006, for a minimum two-star rating.

D. Height of all structures on the South Parcel shall be measured as the vertical distance from the average of the highest finished grade and lowest finished grade adjacent to the building to:

- (a) for a flat roof, the highest point of the coping;
- (b) for a mansard roof, the deck line;
- (c) for a pitched or hip roof, the mid-point of the highest gable;
- (d) for other roof styles, the highest point of the roof; and

Finished grade for purposes of measuring height on all portions of the South Parcel within the one hundred-year floodplain shall be no higher than either (i) three (3) feet above the one hundred-year flood elevation or (ii) the minimum number of feet above the one hundred-year flood elevation required for compliance by applicable local law, whichever is lower.

Finished grade for purposes of measuring height on all portions of the South Parcel outside the one hundred-year floodplain shall be no higher than two (2) feet above the highest natural grade of the portion of Barton Springs Road adjacent to this parcel as said portion of Barton Springs Road exists as of November 14, 2006 (457 mean sea level).

Natural grade shall mean the grade of a parcel as the parcel existed on November 14, 2006, as shown on Exhibit A before it is modified by moving earth, adding or removing fill, or installing a berm, retaining wall, or architectural landscape feature.

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In no event shall any structure or building on the portion of the South Parcel zoned CS-1-NP as of November 14, 2006, as shown on Exhibit H, exceed ninety (90) feet in height.

4. General Regulations Applicable to all Parcels

A. In the event all necessary permits and approvals (the "Required Permits") are obtained pursuant to all applicable local, state, federal, and other governmental regulations to fill and extend the shore of Town Lake north from its present location and such fill and extension is completed, the PUD Land Use Plan will be automatically replaced by an amended PUD Land Use Plan for all purposes, and the Waterfront Overlay District primary and secondary setbacks shall be moved to be 150 feet and 200 feet, respectively, from such reconstructed shoreline, and the City shall allow a site plan to contain both the fill and adjusted setbacks with the condition that the site plan shall not be approved for the adjusted setback unless and until all of the Required Permits are obtained. Notwithstanding the foregoing, the shoreline shall not be relocated more than fifteen (15) feet to the north of its current location as reflected on the PUD Land Use Plan with Maximum Shoreline Reclamation (Exhibit D); and no relocation shall take place without obtaining all Required Permits. In the event all Required Permits are not obtained, the PUD Land Use Plan shall be the land use plan for the PUD and the Property.

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B. A payment instead of structural controls pursuant to Section 25-8-214 of the City Code shall be permitted and is approved for each Parcel. The amount of such payment for each Parcel shall be calculated and paid at the time the first site development permit ("SDP") for each Parcel is released

C. The following transportation-related standards shall apply:

- (1) The internal circulation drive as depicted in the PUD Land Use Plan shall be permitted. Access to South First Street in the locations as depicted in the PUD Land Use Plan is permitted and shall be included in the applicable SDP and shall not require a separate driveway permit.
- (2) A minimum of one (1) loading area and a minimum of one (1) loading space shall be provided within and/or adjacent to the primary building constructed on the West Parcel. A minimum of one (1) loading area and a minimum of one (1) loading space shall be provided within and/or adjacent to the primary building constructed on the South Parcel.
- (3) Except as set forth in Section 3 of Exhibit E of this Ordinance, the minimum number of required off-street parking spaces shall be eighty percent (80%) of the number otherwise required in the Appendix A Tables of Off-Street Parking and Loading Requirements to Chapter 25-8 of the

City Code, and there shall be no maximum number of off-street parking spaces that may be provided. Surface, structured, and underground parking facilities are permitted. Except as set forth in Section 3 of Exhibit E of this Ordinance, during construction activities within the PUD, the minimum number of off-street parking spaces shall not be required and off-site parking shall be permitted at the option of the owner.

D. The Improved Right-of-Way of Barton Springs Drive immediately adjacent to the Property shall be developed to comply with the Great Streets Program, and the area immediately along and adjacent to the east side of the internal circulation drive shall be developed in a manner consistently with the Great Streets Program, provided, the existing trees in the median and along the existing internal circulation drive shall be continued and maintained as they currently exist. As per the Great Streets Program, the sidewalks shall not be included in any impervious coverage calculation.

E. A donation in the amount of four hundred dollars (\$400) per dwelling unit on each parcel shall be calculated and paid at the time the first SDP for each Parcel is released. The donation will be split evenly between the City of Austin and the Town Lake Trail Foundation. At the option of the applicant for each SDP and subject to approval by the City's Parks Board, the applicant may construct improvements within the Hike & Bike & Drainage Easement in the West Parcel or in any other portion of the Hike & Bike Trail along Town Lake in connection with any SDP for any Parcel; and receive a credit against the parkland donation for the actual construction costs of such approved improvements.

F. An integrated pest management (IPM) plan written in accordance with the Pollution Prevention Measures described in the Environmental Criteria Manual Section 1.6.9.2.D shall be implemented.

G. All signage shall conform to the standards set forth in Chapter 25-10 of the City Code except as follows:

- (1) No more than two (2) freestanding monument signs not more than six (6) feet in height and eighteen (18) feet in width shall be permitted along Barton Springs Road and no more than one (1) freestanding monument sign not more than six (6) feet in height and six (6) feet in width shall be permitted along South First Street.
- (2) Signs with internal lighting of individual letters on the external walls of structures are permitted.
- (3) Pole signage shall be prohibited.
- (4) Except as otherwise provided in (1), (2) and (3) of this Section G, the Commercial Sign District regulations in Section 25-10-130 shall apply.

- (5) All signs on the Property shall be considered on-premises signs.

H. The provisions of Section 25-8-281 of the City Code shall apply in the PUD; provided, the setback from the wetlands located along Town Lake in the northwestern portion of the Property shall be fifty (50) feet. The foregoing setback, however, shall not apply to the portion of the Hike & Bike Trail located within the Property, and shall not apply to any portion of the Property located to the south of the Hike & Bike Trail. The provisions of Section 25-8-282 of the City Code shall not apply in the PUD.

I. The following drainage-related standards shall apply:

- (1) Fill dirt required by federal, state, or local regulations for the purpose of raising the area required for the construction and lateral support of buildings, drives, sidewalks, parking, pedestrian improvements, patio areas and other improvements depicted in the PUD Land Use Plan and situated within the one hundred-year base flood elevation is permitted but may be no higher than a maximum of three (3) feet above the one hundred-year base flood elevation.

- (2) Fill dirt required to raise the area required for the construction and lateral support of buildings, drives, sidewalks, parking, pedestrian improvements, patio areas and other improvements depicted in the PUD Land Use Plan and situated outside the one hundred-year base flood elevation is permitted ~~in accordance with applicable City regulations~~ but may be no higher than

- (3) The existing floodplain within the PUD may be modified in connection with and at the time of approval of each SDP, and the regulations in Section 25-7-93 of the City Code shall apply to the improvements as depicted on the PUD Land Use Plan as well as to the buildings and boat docks, and the provisions of Section 25-7-94 shall not be applicable to any SDP for any portion of the Property.

- (4) The provisions of Section 25-7-31 and Section 25-7-61 of the City Code shall not apply to any SDP; provided, any request for a modification of the FEMA Floodplain that the owner may choose to submit to reflect the modifications to the existing floodplain as provided in F(1) above shall be promptly processed by the Director of the Watershed Protection and Development Review Department, or its successor department, in accordance with applicable FEMA regulations.

in the existing conditions Exhibit

J. No license agreement shall be required for any landscaping, irrigation system or associated improvements that is located within the rights-of-way of Barton Springs Road or South First Street.

K. An easement for a waterline shall be granted along and immediately to the west of the right-of-way of South First Street and such waterline shall be extended under and across South First Street to the Property. Such waterline shall be of such size as determined by the owner to be necessary to provide service to the Property and shall be constructed by boring under South First Street in accordance with applicable construction standards, but otherwise without the necessity of further approvals, at the sole cost and expense of the owner.

L. All construction staging areas and construction offices on the Property shall be screened from view outside the boundaries of the Property by an opaque screen eight (8) feet in height, and any and all construction staging areas, trailers, offices, and other facilities shall be removed from the Property within thirty (30) days following the granting of a final Certificate of Occupancy for the structure with which the areas, trailers, offices, or other facilities are associated. In the event that construction associated with a staging area, trailer, office, or other facility ceases for a period of one hundred twenty (120) days or more, all such construction staging areas, trailers, offices, and facilities shall be removed immediately. With regard to the West Parcel, upon removal of the construction staging, trailers, offices, and other facilities, the then owner of the West Parcel shall immediately remove all pavement or other improvement not shown on and in compliance with the PUD Land Use Plan. Notwithstanding anything to the contrary, with regard to all parcels included in this Ordinance, no construction staging areas, trailers, offices or facilities may remain in the primary setback of the Waterfront Overlay for a period longer than one (1) year from the date said staging areas, trailers, offices, or facilities are placed within the Waterfront Overlay, or in the secondary setback of the Waterfront Overlay for a period of longer than two and one-half (2.5) years from the date

M. All rooftop mechanical equipment and machinery on new construction shall be screened from view of adjacent property at a point up to the height of such machinery and equipment and the noise level of all mechanical equipment and machinery may not exceed seventy (70) decibals at the Property line.

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Exhibit H

Metes and Bounds for the former CS-1-NP portion of the South Parcel

[to be attached]

[Faint, illegible text, likely a placeholder for the metes and bounds description]

9.567 Acres
Fairfield Town Lake/Zilker LP.
Travis County, Texas

FN 4121(EMD)
March 03, 2006
SAM, Inc. Job No 25184-01



9.567 ACRES

DESCRIPTION OF A 9.567 (416,730 SQ. FT.) ACRE TRACT OF LAND, BEING ALL OF THAT CALLED TRACT 1 AND TRACT 2, AS DESCRIBED IN THE DEED TO FAIRFIELD TOWN LAKE/ZILKER LP., AS RECORDED IN DOCUMENT NO 2005191745, OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID 9.567 (416,739 SQ. FT.) TRACT, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/4-inch iron rod found in the north right-of-way line of Barton Springs Road (100' Right-of-Way), same being the southwest corner of a called 0.575 acre tract of land, described in deed to Bathhaus Ltd. as recorded in Document No. 2001174688 of the Official Public Records of Travis County, Texas, for the most southerly southeast corner of said Tract 1, and the tract described herein;

THENCE, with the north right-of-way line of Barton Springs Road, S 76°21'17" W, a distance of 266.27 feet to an "X" cut in the concrete at the most southerly southwest corner of said Tract 1, and the southeast corner of that called Lot 5B of the Resubdivision of T.L. Subdivision No. 1 as per plat duly recorded in Document No. 200200297, of the Official Plat Records of Travis County, Texas, same being the southeast corner of a 30' Access Easement recorded in Volume 68, Page 52 of the Plat Records of Travis County, Texas;

THENCE with the common line of said Tract 1, and said Lot 5B and the east line of said 30' Access Easement, N 12°44'42" E, a distance of 11.11 feet to a cotton spindle found;

THENCE continuing with said common line, N 13°40'38" W, a distance of 244.01 feet to a cotton spindle found;

THENCE continuing with said common line, N 26°12'00" E; a distance of 228.38 feet to a cotton spindle found;

THENCE, with the common line of said Tract 1 and a called Lot 5A, of said Resubdivision, the following four (4) courses and distances:

1. N 63°46'01" W, a distance of 327.55 feet to a 1/4-inch iron rod found;
2. S 62°04'24" W, a distance of 22.51 feet to a concrete nail found at a point of non-tangent curve from which a pk nail with washer stamped "UDG" bears N 12°05'20" E, a distance of 1.44 feet;
3. with a non-tangent curve to the right a distance of 28.01 feet, through a central angle of 53°29'14" having a radius of 30.00 feet, and whose chord bears N 89°43'07" W, a distance of 27.00 feet to a concrete nail found from which a pk nail with washer stamped "UDG" bears N 22°19'24" E, a distance of 1.35 feet, and
4. N 63°48'50" W, a distance of 45.28 feet to a 1/4-inch iron rod found for the southwest corner of said Tract 1 and the northwest corner of said Lot 5A same being in the east right-of-way line of the frontage road of South First Street (variable width);

THENCE, with the common line of the frontage road of South First Street and said Tract 1, N 30°54'58" E, a distance of 150.66 feet to a 1/4-inch iron rod found for the common west corner of said Tract 1 and said Tract 2;

THENCE leaving said common corner, with said east right-of-way line, same being the west line of said Tract 2, the following five (5) courses and distances:

1. N 30°55'24" E a distance of 90.79 feet to a 1/4-inch iron rod found,
2. N 18°03'56" E, a distance of 44.36 feet to a 1-inch iron pipe found at a point of non tangent curve,

9.567 Acres
Fairfield Town Lake/Zilker LP.
Travis County, Texas

FN 4121(EMD)
March 03, 2006
SAM, Inc. Job No. 25184-01

- 3 with a non-tangent curve to the left a distance of 32.39 feet, through a central angle of $03^{\circ}55'54''$ having a radius of 471.96 feet, and whose chord bears $N 17^{\circ}57'38'' E$, a distance of 32.38 feet to a 1-inch iron pipe found,
4. with a non-tangent curve to the left a distance of 23.25 feet, through a central angle of $07^{\circ}36'20''$ having a radius of 175.17 feet, and whose chord bears $N 10^{\circ}52'46'' E$, a distance of 23.24 feet to a $\frac{1}{2}$ -inch iron rod with a "SAM, Inc." plastic cap set, and
5. $N 30^{\circ}54'48'' E$, a distance of 91.48 feet to a $\frac{1}{2}$ -inch iron rod found, for the northwest corner of said Tract 2 and the tract described herein;

THENCE with the north line of said Tract 1 and said Tract 2, $S 63^{\circ}49'09'' E$, a distance of 739.28 feet to a point, submerged in Town Lake for the northeast corner of said Tract 1 and the northwest corner of said 0.575 acre tract, same being the northeast corner of the tract described herein;

THENCE leaving the south line of Town Lake and with the common line of said Tract 1 and said 0.575 acre tract, the following three (3) courses and distances:

1. $S 18^{\circ}59'21'' W$, passing at a distance of 17.65 feet a $\frac{1}{2}$ " iron rod found and continuing a total distance of 254.16 feet to a $\frac{1}{2}$ -inch iron rod found,
2. $S 70^{\circ}56'01'' W$, a distance of 58.30 feet to a punch hole in concrete for the most westerly northwest corner of said 0.575 acre tract same being an inside ell corner, and

$S 19^{\circ}00'21'' W$, a distance of 400.15 feet to the POINT OF BEGINNING, and containing 9.567 (416,730 sq. ft.) acres of land, more or less.

Bearing Basis:

Cotton Spindles at an inside ell corner of said 9.567 acre tract and being the common line with said Lot 5A and Lot 5B. Called bearing and distance between these Cotton Spindles is $N 26^{\circ}12' E$ - 228.39 feet. Held called bearing of $N 26^{\circ}12'00'' E$ and found actual distance to be 228.38 feet.

STATE OF TEXAS

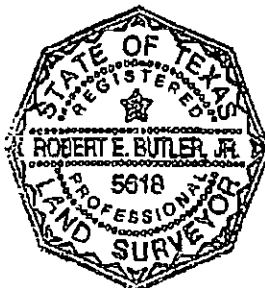
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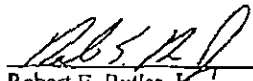
COUNTY OF TRAVIS

That I, Robert E. Butler, Jr., a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground during July, 2005 under my direction and supervision

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the 3rd day of March, 2006 A.D.

SURVEYING AND MAPPING, Inc.
5508 West Highway 290, Building B
Austin, Texas 78735




Robert E. Butler, Jr.
Registered Professional Land Surveyor
No. 5618 - State of Texas

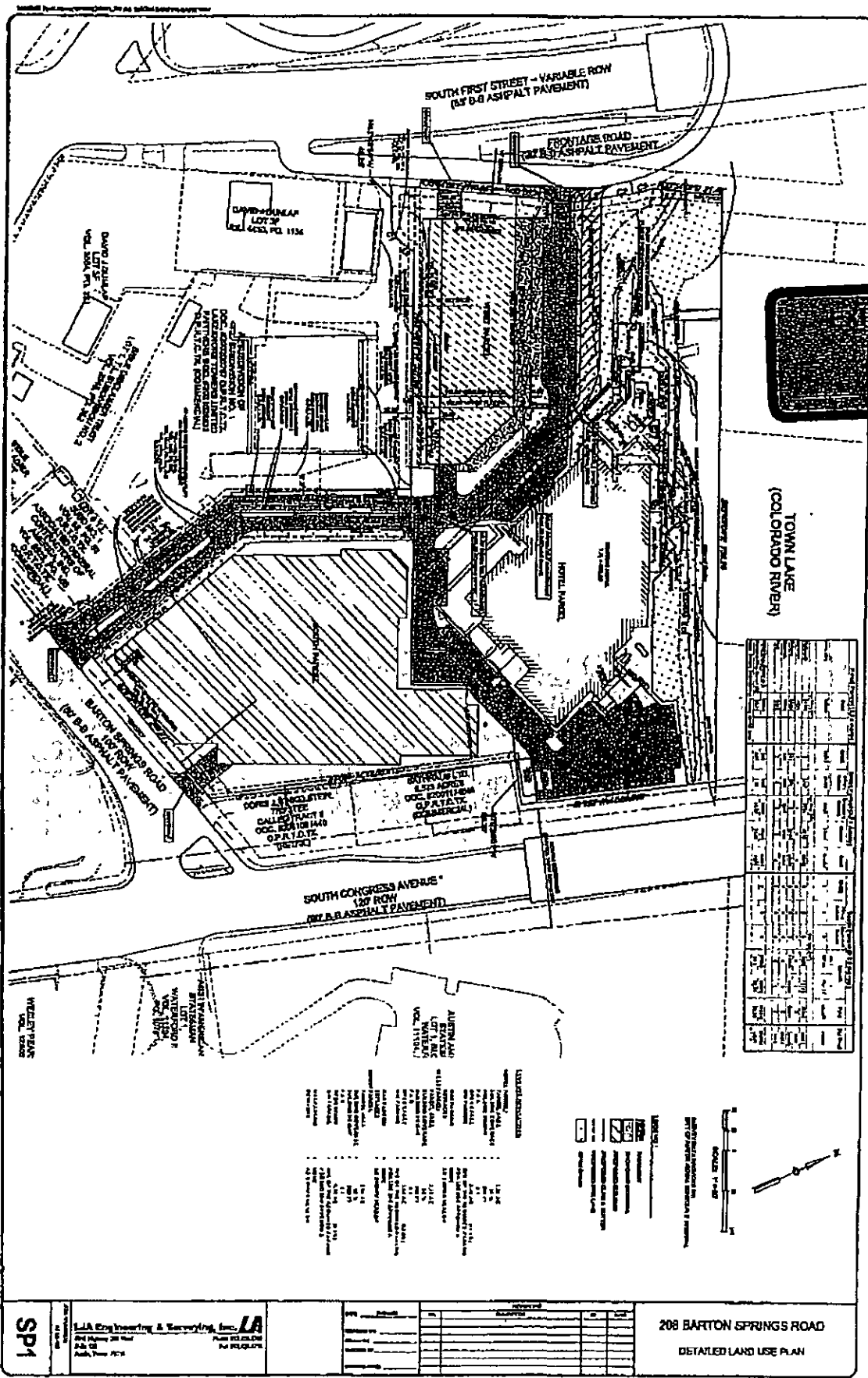
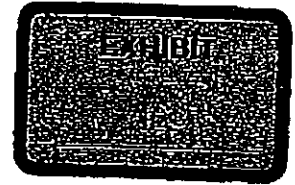


EXHIBIT "A"
0.491 acre (21,375 sq. ft.)
SAM, Inc. Job No. 26267-04

FN4352(ALG)
November 8, 2006



DESCRIPTION OF A 0.491 ACRE (21,375 SQ. FT.) TRACT OF LAND BEING A PORTION OF THAT CALLED LOT A OF THE T.L. SUBDIVISION 3A AS PER PLAT DULY RECORDED IN VOLUME 82, PAGE 380, OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, AND FURTHER DESCRIBED AS TRACT 1, IN THE DEED TO FAIRFIELD TOWN LAKE/ZILKER LP, AS RECORDED IN DOCUMENT NO. 2005191745, OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID 0.491 ACRE (21,375 SQ. FT.) TRACT OF LAND AS SHOWN ON THE ACCOMPANYING SKETCH AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2-inch iron rod found in the north right-of-way line of Barton Springs Road, a 100-foot wide right-of-way, same being the south common corner of said Lot A, and a called 0.575 acre tract of land described in the deed to Bathhaus Ltd., as recorded in Document No. 2001174688, of the Official Public Records of Travis County, Texas, from which a punch-hole in concrete found for the northwest corner of said 0.575 acre tract, also being an interior ell corner of said Lot A, bears N 19° 00' 21" E, a distance of 400.15 feet;

THENCE with said north right-of-way line, S 76° 21' 17" W, a distance of 60.33 feet to calculated point, for the southeast corner and the POINT OF BEGINNING of the tract described herein;

THENCE continuing with said north right-of-way line, S 76° 21' 17" W, a distance of 171.00 feet to a calculated point, for the southwest corner of the tract described herein, from which an "X" cut in concrete found in said north right-of-way line, same being a south common corner of said Lot A and a tract of land (Tract 3), described in the deed to Fairfield Town Lake/Zilker LP, as recorded in Document No. 2005191745, of the Official Public Records of Travis County, Texas, bears S 76° 21' 17" W, a distance of 34.94 feet;

THENCE leaving said north right-of-way line, crossing through the interior of said Lot A, the following three (3) courses and distances:

1. N 13° 40' 38" W, a distance of 125.00 feet to a calculated point,
2. N 76° 21' 17" E, a distance of 171.00 feet to a calculated point, and

EXHIBIT "A"
0.491 acre (21,375 sq. ft.)
SAM, Inc. Job No. 26267-04

FN4352(ALG)
November 8, 2006

3 S 13° 40' 38" E, a distance of 125.00 feet to the POINT OF BEGINNING and containing 0.491 acre (21,375 sq. ft.) of land more or less.

BEARING BASIS: Cotton spindles at an inside ell corner of Lot A and a point of intersection in a west line of Lot A of T. L. Subdivision 3A, a subdivision of record in Volume 82, Page 380, of the Plat Records of Travis County, Texas. Called bearing and distance between these cotton spindles is N26°12'E - 228.39 feet. Held called bearing of N26°12'00"E and found actual distance to be 228.38 feet

This description is accompanied by a separate plat; see "Sketch to Accompany Field Note No. 4352", attached hereto and made a part hereof.

THE STATE OF TEXAS

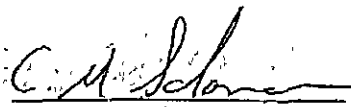
KNOW ALL MEN BY THESE PRESENTS:

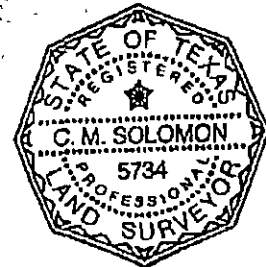
COUNTY OF TRAVIS

That I, C. M. Solomon, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the 8th day of November A.D.

SURVEYING AND MAPPING, Inc.
5508 West Highway 290, Building B
Austin, Texas 78735


C. M. Solomon
Registered Professional Land Surveyor
No. 5734 - State of Texas



LEGEND

- △ CALCULATED POINT
- ⊙ PUNCH IN CONCRETE
- 1/2" IRON ROD FOUND UNLESS NOTED
- ✕ "X" CUT IN CONCRETE
- O.P.R.T.C.TX. OFFICIAL PUBLIC RECORDS TRAVIS COUNTY, TEXAS
- D.R.T.C.TX. DEED RECORDS OF TRAVIS COUNTY, TEXAS
- P.R.T.C.TX. PLAT RECORDS OF TRAVIS COUNTY, TEXAS
- P.O.B. POINT-OF-BEGINNING
- P.O.C. POINT-OF-COMMENCEMENT

100 50 0 100



GRAPHIC SCALE
SCALE: 1" = 100'
NOVEMBER 2008
TRAVIS COUNTY, TEXAS

N

FAIRFIELD TOWN LAKE/ZILKER LP (TRACT 1)

DOC. NO. 2005191745
O.P.R.T.C.TX.

**LOT A
T.L. SUBDIVISION 3A
VOL. 82, PG. 380
P.R.T.C.TX.**

LOT 5A
RESUBDIVISION OF
T.L. SUBDIVISION NO. 1
DOC. #200200297
O.P.R.T.C.TX.
LAKESHORE TOWERS LIMITED PARTNERSHIP
DOC. #2001025832
O.P.R.T.C.TX.
(COMMERCIAL)

LOT 5B
RESUBDIVISION OF
T.L. SUBDIVISION NO. 1
DOC. #200200297
O.P.R.T.C.TX.
LRC LAKEVIEW PROPERTIES, LTD
DOC. #2003222211
O.P.R.T.C.TX.
(COMMERCIAL)

FAIRFIELD TOWN LAKE/ZILKER LP
(TRACT 3)
30' ACCESS EASEMENT
DOC. NO. 2005191745
O.P.R.T.C.TX.

LOT 6
T.L. SUBDIVISION NO. 1
VOL. 68, PG. 52
P.R.T.C.TX.
ASSOCIATED GENERAL
CONTRACTORS OF AMERICA, INC.
VOL. 6923, PG. 155
D.R.T.C.TX.
(COMMERCIAL)

BATHAUS LTD
CALLED 0.575 ACRES
O.P.R.T.C.TX.
(COMMERCIAL)

400.15'

N19°00'21"E

119°00'21"E

119°00'21"E

119°00'21"E

119°00'21"E

119°00'21"E

119°00'21"E

119°00'21"E

119°00'21"E

119°00'21"E

119°00'21"E

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119°00'21"E

119°00'21"E

119°00'21"E

119°00'21"E

119°00'21"E

119°00'21"E

N76°21'17"E 171.00'

S13°40'38"E 125.00'

S76°21'17"W 171.00'

S76°21'17"W 171.00'

S76°21'17"W 171.00'

S76°21'17"W 171.00'

S76°21'17"W 171.00'

S76°21'17"W 171.00'

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S76°21'17"W 171.00'

S76°21'17"W 171.00'

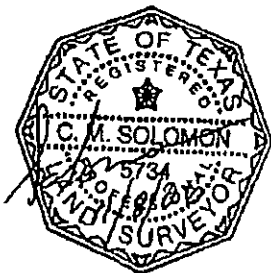
S76°21'17"W 171.00'

S76°21'17"W 171.00'

S76°21'17"W 171.00'

BARTON SPRINGS ROAD
(100' WIDE RIGHT-OF-WAY)

SOUTH CONGRESS AVENUE
(120' WIDE RIGHT-OF-WAY)



LINE TABLE		
LINE	BEARING	LENGTH
L1	S76°21'17"W	60.33'
L2	S76°21'17"W	34.94'

BEARING BASIS

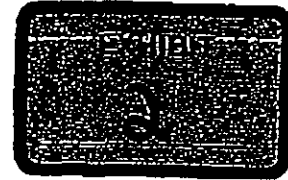
COTTON SPINDLES AT AN INSIDE ELL CORNER OF LOT A AND A POINT OF INTERSECTION IN A WEST LINE OF LOT A OF T L SUBDIVISION 3A, A SUBDIVISION OF RECORD IN VOLUME 82, PAGE 380 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS. CALLED BEARING AND DISTANCE BETWEEN THESE COTTON SPINDLES IS N26°12'E - 228.39 FEET. FIELD CALLED BEARING OF N26°12'00"E AND FOUND ACTUAL DISTANCE TO BE 228.38 FEET

PROJECT: HYATT RESIDENT
JOB NUMBER: 14167-04
DATE: NOVEMBER 8, 2008
SURVEYOR: CMT
PLATT CHECK: NA
FIELDBOOK: NA
FIELDNOTE: (N4332(ALL) DOC
TECHNICIAN: ALG
DRAWING: FALLS ENGINEERING
SCALE: 1" = 100'



5508 WEST HIGHWAY 290
BUILDING B
AUSTIN TEXAS, 78733
(512) 467-0575
FAX (512) 320-3029
EMAIL: SAM@SAMINC.AUS.COM

SKETCH TO ACCOMPANY
FIELD NOTE No. 4352
PAGE 3 OF 3



RESTRICTIVE COVENANT

This Restrictive Covenant (this "Restrictive Covenant") is made to be effective the date set forth below (the "Effective Date") by FAIRFIELD TOWN LAKE/ZILKER LP, a Texas limited partnership ("Owner"). It is the express intent of Owner that this Restrictive Covenant shall run with the land, is for the benefit of the Bouldin Creek Neighborhood Association (hereinafter, "BCNA") and its successor organizations and its members and is enforceable by BCNA and its members.

RECITALS:

A. Owner is the owner of 9.57 acres of land, more or less, in the City of Austin, Travis County, Texas, more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof (the "Property").

B. Owner has filed a rezoning application (the "Application") with the City of Austin for the purpose of rezoning the Property and creating a Planned Unit Development.

C. Owner has sought the support of the BCNA for the Application.

D. Owner has agreed to impose upon the Property these covenants and conditions for the mutual benefit of the Property, Owner, and BCNA.

E. In reliance upon Owner's Restrictive Covenant to impose these covenants and conditions, BCNA has agreed to not object to the Application.

NOW, THEREFORE, for the consideration set forth in Paragraphs D and E above, the receipt and sufficiency of which is hereby acknowledged, Owner does hereby impose the following obligations, restrictions and covenants upon the Property (collectively, the "Restrictions"), which shall be binding upon Owner and all subsequent owners of the Property, or any portion thereof. Owner further declares that the Property shall be held, sold and conveyed, subject to the following:

Covenants:

- I. (a) Within two (2) years from the Effective Date of this Restrictive Covenant, BCNA shall unilaterally designate an entity (the "Future Community Benefit Entity") to be the recipient of the Hyatt Community Benefit Payment (as defined in Paragraph 2 below) and the South Parcel Community Benefit Payment (as defined in paragraph 3 below) (the Hyatt Community Benefit Payment and the South Parcel Community Benefit Payment are collectively referred to as the "Community Benefit Payments"). The Future Community Benefit Entity shall be a non-profit entity whose purpose is, at least in part, to provide, manage, support, or facilitate affordable housing and/or affordable housing initiatives within the Austin community. The entity may be one that either was created prior to the

Effective Date, is in existence as of the Effective Date, or is created after the Effective Date. Upon designation of said Future Community Benefit Entity, BCNA shall send written notice to Owner of the name, address, and telephone number of the Future Community Benefit Entity.

(b) If BCNA does not designate the Future Community Benefit Entity on or before the day that is two (2) years from the Effective Date or, if applicable, within the time period set forth in Paragraph 1.c. below, the Community Benefit Payments shall be donated to the Austin Housing Finance Corporation or its successor entity or, if the Austin Housing Finance Corporation, a Texas non-profit corporation, does not exist, to the City of Austin, a Texas municipal corporation.

(c) Within three (3) calendar days following the issuance of each site development permits for the Property, Fairfield shall send written notification to BCNA that a site development permit has been issued for the Property. Notwithstanding anything else herein to the contrary, if either of the Community Benefit Payments becomes due and payable pursuant to Paragraph 2 below on a date that is both prior to the expiration of two (2) years from the Effective Date and prior to the date the Future Community Benefit Entity is designated by BCNA, BCNA shall have forty-five (45) calendar days from the date the subject portion of the Community Benefit Payments becomes due and payable to designate the Future Community Benefit Entity, and Fairfield shall not make any payments to any entity prior to the expiration of said forty-five (45) day period.

2. Within ten (10) calendar days after the date a site development permit is issued by the City of Austin for the construction, remodel, or expansion of a building on the part of the Property shown as the "Hyatt Parcel" in Exhibit "B", attached hereto and made a part hereof for all purposes, resulting in any increase in square footage greater than the existing 332,445 square feet of space (whether said square footage be air conditioned space, non-air conditioned space, occupied space, or unoccupied space) Owner shall pay to the Future Community Benefit Entity immediately accessible funds (the "Hyatt Community Benefit Payment") in an amount equal to Fourteen and NO/100 Dollars (\$14.00) for each said square foot of space added to the Hyatt Parcel. Said Fourteen Dollars (\$14.00) per each square foot shall be due and payable pro rata such that any increase in space beyond a full square foot shall be paid for on a pro rata basis. For purposes of clarifying the intent of this provision and as an example of the pro rata calculation of the Hyatt Parcel Community Benefit, if Fairfield adds twenty (20) square feet of space to the Hyatt Parcel, Fairfield must pay a Hyatt Community Benefit Payment of Two Hundred Eighty and NO/100 Dollars (\$280.00), and if Fairfield adds twenty and one-half (20.5) square feet of space to the Hyatt Parcel, Fairfield must pay a Hyatt Community Benefit Payment of Two Hundred Eighty-Seven and NO/100 Dollars (\$287.00).

3. Within ten (10) calendar days after the date a site development permit is issued by the City of Austin for the construction, remodel, or expansion of a building on the

part of the Property shown as the "CS-1-NP South Parcel" in Exhibit "B", attached hereto and made a part hereof for all purposes, to any height above sixty (60) feet of height, Owner shall pay to the Future Community Benefit Entity immediately accessible funds (the "South Parcel Community Benefit Payment") in an amount equal to Fourteen Thousand Two Hundred Eighty-Six and NO/100 Dollars (\$14,286.00) for each vertical foot of height, pro rata, above sixty (60) feet of height. For purposes of clarifying the intent of this provision and as an example of the pro rata calculation of the South Parcel Community Benefit, if Fairfield constructs a structure on the South Parcel that is seventy (70) feet in height, Fairfield must pay a South Parcel Community Benefit Payment of One Hundred Forty-Two Thousand Eight Hundred Sixty and NO/100 Dollars (\$142,860.00), and if Fairfield constructs a structure on the South Parcel that is seventy and one half (70.5) feet in height, Fairfield must pay a South Parcel Community Benefit Payment of One Hundred Fifty Thousand Three and NO/100 Dollars (\$150,003.00).

4. For purposes of calculating the Community Benefit Payments, the height of all buildings on the Property shall be measured as the vertical distance from the average of the highest finished grade and lowest finished grade adjacent to the building to:

- (a) for a flat roof, the highest point of the coping;
- (b) for a mansard roof, the deck line;
- (c) for a pitched or hip roof, the mid-point of the highest gable;
- (d) for other roof styles, the highest point of the roof.

Finished grade for purposes of measuring height on all portions of the property within the one hundred-year floodplain shall be no higher than either (i) three (3) feet above the one hundred-year flood elevation or (ii) the minimum number of feet above the one hundred-year flood elevation required for compliance by applicable law, whichever is lower.

Finished grade for purposes of measuring height on all portions of the property outside the one hundred-year floodplain shall be no higher than two (2) feet above natural grade.

Natural grade shall mean the grade of a parcel as the parcel existed on November 14, 2006, as shown on Exhibit "C" (Existing Conditions Plan), attached hereto and made a part hereof for all purposes, before it is modified by moving earth, adding or removing fill, or installing a berm, retaining wall, or architectural landscape feature.

For purposes of calculating the Community Benefit Payments, the height of all buildings on the Property shall be measured as the vertical distance from the

Add this provision back

~~average of the highest natural grade and lowest natural grade adjacent to the building to:~~

- ~~(a) for a flat roof, the highest point of the coping;~~
- ~~(b) for a mansard roof, the deck line;~~
- ~~(c) for a pitched or hip roof, the highest point of the highest gable;~~
- ~~(d) for other roof styles, the highest point of the roof.~~

~~Natural grade shall mean the grade of a tract before it is modified by moving earth, adding or removing fill, or installing a berm, retaining wall, or architectural landscape feature.~~

5. In addition to the regulations set forth in Paragraphs 4 above and 6 below, for purposes of this Restrictive Covenant the measurement and determination of height of all buildings shall not include any of the following: parapet walls, chimneys, vents, mechanical features, safety features, fire towers, stairways, elevator penthouses, heating or cooling equipment, and protective covers (collectively, the "1st Excepted Structures") so long as said 1st Excepted Structures do not exceed the greater of:

- (a) six (6) feet;
- (b) the number of feet of height necessary to comply with a federal or state regulation; or
- (c) for a stack or vent, the number of feet of height necessary to comply with generally accepted engineering standards.

Items (a) through (c) of this Paragraph 5 shall be hereinafter referred to as the "1st Height Exceptions".

For purposes of this Restrictive Covenant, any portion of any 1st Excepted Structure on the Property that exceeds the greater of the 1st Height Exceptions shall be counted as height.

- 6 In addition to the regulations set forth in Paragraphs 4 and 5 above, for purposes of this Restrictive Covenant the measurement and determination of height of all buildings shall not include any of the following: ornamental towers, cupolas, domes, and spires that are not designed or used for occupancy so long as said ornamental towers, cupolas, domes, and spires (collectively, the "2nd Excepted Structures") do not exceed the lesser of:

- (a) five (5) feet in height; or
- (b) if attached to a building, five (5) feet of height above the building.

Items (a) and (b) of this Paragraph 6 shall be hereinafter referred to as the "2nd Height Exceptions".

For purposes of this Restrictive Covenant, any portion of any 2nd Excepted Structure on the Property that exceeds the lesser of the 2nd Height Exceptions shall be counted as height.

7. The existing buildings, structures, parking, loading areas and other improvements located in the Hotel Parcel may be maintained, repaired, restored, modified, altered, renovated, improved, replaced and upgraded so long as:

with respect to those portions of the existing primary building that are less than sixty (60) feet in height, all alterations, modifications, replacements, additions and other improvements are within a building envelope that (a) does not enlarge the existing footprint of the existing hotel building by more than twenty-five (25) linear feet; (b) does not exceed up to thirty (30) feet in height where there is currently no structure or up to sixty (60) feet in height where there is an alteration, modification, replacement, addition, or other improvement to a structure existing as of the effective date of this Ordinance; and (c) is not within the primary or secondary setbacks of the South Shore Central Waterfront Overlay subdistrict.

~~There shall be no expansion in or upon the Hyatt Parcel that would result in a height of any new structure on the Hyatt Parcel being greater than thirty (30) feet in height or in the height of any remodeled, reconstructed, or expanded existing structure on the Hyatt Parcel being greater than sixty (60) feet in height. For purposes of this Restrictive Covenant, the phrase "existing structure" means the structure constructed, and existing on or before the Effective Date, of this Restrictive Covenant, as shown on Exhibit C, Existing Conditions, attached hereto.~~

8. ~~There shall be no expansion or construction upon the Hyatt Parcel into any part of the setbacks established by the City of Austin Waterfront Overlay in effect as of the Effective Date. BCNA and Fairfield acknowledge that structures presently exist within a Waterfront Overlay on the Hyatt Parcel, and said structures may remain as they are presently constructed as of the Effective Date. BCNA and Fairfield also agree, however, that no such existing structures may be expanded, reconstructed, or constructed within any portion of a Waterfront Overlay setback.~~

8. Group Residential use and Sexually-Oriented Business use shall be prohibited uses on the Property. Definition of these and all uses named in this Restrictive Covenant shall be as defined in Chapter 25-2 of the City Code of the City of Austin in effect as of the Effective Date

9. No structure on the portion of the CS-1-NP South Parcel shall be higher than ninety (90) feet in height, ~~and in no event shall the Hyatt Parcel have a footprint larger than twenty five (25) feet greater than the size of the footprint existing as of the Effective Date.~~

} to be added to para. #7. language

10. All rooftop mechanical equipment and machinery on construction done after the Effective Date of this covenant shall be screened from view of adjacent property at a point up to the height of such machinery and equipment, and the noise level of all mechanical equipment and machinery may not exceed seventy (70) decibels at the property line.

11. This Restrictive Covenant and the restrictions, covenants, benefits and obligations created hereby are benefits and servitudes running with the land and shall inure to the benefit of the Owner, BCNA, and their respective heirs, representatives, lessees, successors, and assigns and shall be binding upon the Owner, and its heirs, representatives, lessees, successors and assigns.

12. If any part of this Restrictive Covenant or any of the foregoing covenants is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Restrictive Covenant, and such remaining portion of this Restrictive Covenant shall remain in full effect.

13. If at any time BCNA or any of its members fails to enforce this Restrictive Covenant, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

14. This Restrictive Covenant may be modified, amended, or terminated only by joint written action of both (a) BCNA, and (b) the owner(s) of the Property, or the portion thereof subject to the modification, amendment or termination, at the time of such modification, amendment or termination.

15. All notices required shall be in writing addressed to the respective parties as set forth below, unless another address shall have been designated, and shall be delivered by personal delivery, or by registered or certified mail, to the parties as follows:

If to BCNA, to:

Bouldin Creek Neighborhood Association
Attn: Association President
P.O. Box 3683
Austin, Texas 78764

with a copy to:

Brown McCarroll, L.L.P.
Attn: Nikelle S. Meade
111 Congress Avenue, Suite 1400
Austin, Texas 78701-4043
(512) 479-1147

If to Owner, to:

Glenn Jones/Sandra Hill
Fairfield Town Lake/Zilker LP
2045 N. Hwy 360, Ste. 250
Grand Prairie, TX 75050
(817) 816-9400

16. Governing Law. The laws of the State of Texas shall govern this Restrictive Covenant. Venue for all purposes shall be Travis County, Texas.
18. Security for Performance. Owner agrees, in exchange for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by BCNA, the receipt and sufficiency of which is hereby acknowledged and confessed by Owner, to provide to BCNA Five Thousand and NO/100 Dollars (\$5,000.00), to be used by BCNA to pay costs and legal fees, including but not limited to, expenses incurred in connection with the enforcement of this Restrictive Covenant to be paid by Owner to BCNA on the Effective Date.

EXECUTED this the _____ day of November, 2006 (the "Effective Date").

OWNER:

FAIRFIELD TOWN LAKE/ZILKER LP

By: FF Town Lake/Zilker LLC, a Delaware
limited liability company, General Partner

By: FF Properties, Inc., a Delaware corporation,
Manager

By: _____
Name: _____
Title: _____

STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2006, by _____, _____, of FF Properties, Inc., a Delaware corporation, on behalf of said corporation as Manager of FF Town Lake/Zilker LLC, a Delaware limited liability company, on behalf of said limited liability company as General Partner of FAIRFIELD TOWN LAKE/ZILKER LP, a Delaware limited partnership, on behalf of said limited partnership.

NOTARY PUBLIC, State of Texas

AFTER RECORDING, PLEASE RETURN TO:

**Brown McCarroll, L.L.P.
Attn. Nikelle S. Meade
111 Congress Avenue, Suite 1400
Austin, Texas 78701-4043**

AUS-3836395.8
52445.4

Accepted:

BCNA

By: Kathie Toro, President



RESTRICTIVE COVENANT

OWNER: FAIRFIELD TOWN LAKE/ZILKER LP, a Texas limited partnership

ADDRESS: 2045 North Highway 360, Suite 250, Grand Prairie, Texas 75050

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: 9.57 acres of land, more or less, in the City of Austin, Travis County, Texas, more particularly described by metes and bounds in Exhibit "A" incorporated into this covenant.

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owners of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owners of the Property, its heirs, successors, and assigns.

1. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds the total traffic generation for the Property specified in that certain Traffic Impact Analysis (the "TIA") prepared by Scott Feldman of Alliance Transportation Group, dated February 2006, or as amended and approved by the Director of the Watershed Protection and Development Review Department, or its successor department, of the City of Austin. All development on the Property is subject to the recommendations contained in the memorandum from the Transportation Review Section of the Watershed Protection and Development Review Department, dated August 16, 2006. The TIA shall be kept on file at the Watershed Protection and Development Review Department, or its successor department, of the City of Austin.
2. At the time an application for approval of the site plan for the first phase of the development of the Property is submitted to the Watershed Protection and Development Review Department, or its successor, for development of the Property, or any portion of the Property, an Integrated Pest Management Plan (the "IPM Plan") shall be submitted to the Watershed Protection and Development Review Department, or its successor department, for review and approval. The IPM Plan shall comply with the guidelines in

Section 1.6.9.2 (D) and (F) of the Environmental Criteria Manual that are in effect on the date of this restrictive covenant.

3. At the time an application for approval of the site plan is submitted to the Watershed Protection and Development Review Department, or its successor department, for development of any portion of the Property adjacent to Barton Springs Road, the Owner shall design streetscape improvements in full compliance with the City of Austin Great Streets design criteria as the criteria existed on the date of this restrictive covenant within the public right-of-way of Barton Springs Road immediately adjacent to the portion of the Property for which such site plan application is submitted. Design, permitting and construction of streetscape improvements will be at Owner's expense. The Owner shall coordinate the design of the streetscape improvements with the Urban Design Section of the Neighborhood Planning and Zoning Department, or its successor department, of the City of Austin. The streetscape improvements shall be constructed and completed prior to the issuance of the final certificate of occupancy for the building to be constructed on the portion of the Property for which a site plan is approved and released by the City of Austin. The Urban Design Section, or its successor, shall inspect and approve the streetscape improvements prior to issuance of such certificate of occupancy.
4. If any person or entity shall violate or attempt to violate this agreement and any of the foregoing covenants, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate this agreement or such covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
5. If any part of this agreement or any of the foregoing covenants is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
6. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
7. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the _____ day of _____, 2006.

OWNER:

FAIRFIELD TOWN LAKE/ZILKER LP

By: FF Town Lake/Zilker LLC, a Delaware
limited liability company, General Partner

By: FF Properties, Inc., a Delaware corporation,
Manager

By: _____
Name: _____
Title: _____

STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2006, by _____, of FF Properties, Inc., a Delaware corporation, on behalf of said corporation as Manager of FF Town Lake/Zilker LLC, a Delaware limited liability company, on behalf of said limited liability company as General Partner of FAIRFIELD TOWN LAKE/ZILKER LP, a Delaware limited partnership, on behalf of said limited partnership.

NOTARY PUBLIC, State of Texas

AFTER RECORDING, PLEASE RETURN TO: